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In The

Supreme Court of the United States

October Term, 1994

ELOISE ANDERSON, in her official capacity as Director of the California Department of Social Services and RUSSELL GOULD, in his official capacity as Director of the California Department of Finance,

Petitioners,

v.

VERNA EDWARDS, for herself and as Guardian Ad Litem for VERNAIS EDWARDS, PAMELA EDWARDS and ERICKA EDWARDS; BARBARA MOORE, for herself and as Guardian Ad Litem for REBIANA ROBI, DERRAL ROBI, DELISHA JAA, RAYLEISHA TAYLOR; and VANESSA HAMILTON for herself and as Guardian Ad Litem for JONNY WATSON, CLEO THOMAS, RICKY MCDONALD, JIMMY PASHELL, and STANLEY HAMILTON, on behalf of themselves and all others similarly situated,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITIONERS' BRIEF ON THE MERITS

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QUESTION PRESENTED

May a state, consistent with federal law governing the Aid to Families with Dependent Children (AFDC) program, group all needy children, siblings and non-siblings alike, into a single AFDC assistance unit, when the children all live in the same household with one relative caretaker?

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On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITIONERS' BRIEF ON THE MERITS

Petitioners, Eloise Anderson, Director of the California Department of Social Services, and Russell Gould,

Director of the California Department of Finance, (hereinafter, "California") having been granted a Writ of Certiorari, hereby submit their Brief on the Merits.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, reported as *Edwards v. Healy*, 12 F.3d 154 (9th Cir. 1993), is reproduced in the Appendix to the Petition for Writ of Certiorari (hereinafter "App."), beginning at App. 1. The opinion of the United States District Court for the Eastern District of California is not reported but is reproduced beginning at App. 15.

JURISDICTION

On December 1, 1993, the United States Court of Appeals for the Ninth Circuit affirmed the District Court's judgment for respondents. App. 1. California timely filed a Petition for Rehearing with Suggestion for Rehearing En Banc, and on February 22, 1994, the Court of Appeals denied that petition. App. 28. The Petition for Writ of Certiorari was timely filed on May 20, 1994, and was granted on September 26, 1994. This Court has jurisdiction to review, by way of writ of certiorari, the judgment of a court of appeals. 28 U.S.C. § 1254(1).

RELEVANT STATUTORY AND REGULATORY PROVISIONS

The California AFDC regulation, Manual of Policies & Procedures ("MPP") § 82-824.1.13,[1] provides:

> "Combining AUs [Assistance Units]
>
> "Two or more AUs in the same home shall be combined into one AU when:
>
> ". . . . . .
>
> ".13 One caretaker
>
> "There is only one caretaker relative."

In striking down California's regulation, the Ninth Circuit relied on three federal AFDC regulations:

45 C.F.R. § 233.20(a)(2)(viii) provides that a state AFDC plan must specify a statewide standard for determining financial need and the amount of payment that,

> "Provide[s] that the money amount of any need item included in the standard will not be prorated or otherwise reduced solely because of the presence in the household of a non-legally

---

[1] When this case was filed in the district court, Manual of Policies & Procedures § 44-205.3.31 provided:

> "Determining the number of FBUs [Family Budget Units] in the home
>
> ".31 Once the county has determined which person or persons in the home is a caretaker relative, it is possible to establish the FBU. All of the eligible child(ren) will be in one FBU if there is only one caretaker relative in the home. If there is more than one caretaker relative in the home, the eligible children of each caretaker will be in separate FBUs, except in the following situations. . . . "

The full text of § 44-205 appears at App. 56-7.

responsible individual; and the agency will not assume any contribution from such individual for the support of the assistance unit except as provided in paragraphs (a)(3)(xiv) and (a)(5) of this section and § 233.51 of this part."

45 C.F.R § 233.20(a)(3)(ii)(D) provides that in determining need and the amount of assistance,

"Income after application of disregards, except as provided in paragraph (a)(3)(xiii) of this section, and resources available for current use shall be considered. To the extent not inconsistent with any other provision of this chapter, income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance."

45 C.F.R. § 233.90(a)(1) provides:

"The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his or her parent who is the principal earner will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is married, under State law, to the child's natural or adoptive parent and is legally obligated to support the child under State Law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or

> the presence in the home, of a 'substitute parent' or 'man-in-the-house' or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assum ing the availability of income by the State;. . . . "

STATEMENT OF THE CASE

The California AFDC regulation challenged in this case[2] requires that where AFDC assistance is sought for a needy child who is related to, but is not the natural or adopted child of, the adult caretaker relative and where there are other children living in the household for whom the caretaker receives AFDC assistance, all needy individuals, i.e., siblings and non-siblings alike, and the caretaker relative as well, if needy, must be grouped into one assistance unit. This regulation is referred to in this brief as the "non-sibling filing unit rule."

Plaintiffs in this action are children who qualify for AFDC and reside with a caretaker relative who cares for them and two or more non-sibling children. The children's caretakers are also plaintiffs. Plaintiff Verna Edwards cares for her granddaughter and two grandnieces. Plaintiff Barbara Moore cares for her own son and daughter and two orphaned grandchildren. Plaintiff Vannessa Hamilton cares for her two sons and three orphaned nephews by two different sisters. First

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[2] Just before this case was filed in the district court, MPP § 44-205 was in effect. See footnote 1, above. On October 1, 1991, California repealed § 44-205 and adopted § 82-824.

Amended Complaint, filed January 10, 1992, pp. 5-11. In each instance California's non-sibling filing unit rule groups all of the children in each household into one assistance unit.

The consolidation of the assistance units increases the gross amount paid to the households, however, the resulting grant is lower per capita than if the siblings and non-siblings were considered separate assistance units. Thus, in the absence of the non-sibling filing unit rule, plaintiff Verna Edwards' granddaughter and grandnieces are separated into two assistance units. The maximum aid payment Edwards can receive is $789 per month. If instead all three AFDC-eligible children under Edwards's care were grouped into one assistance unit, she would receive $607 per month, which is the same amount as any other three-person assistance unit would receive. Similarly, Barbara Moore's household of herself and three children is currently composed of two assistance units, and she receives a maximum of $980 per month. Vanessa Hamilton receives a maximum of $1196 for her five children who are in three assistance units. If the non-sibling filing unit rule were in effect, Moore would receive $723 and Hamilton $926, which are the same amounts they would receive if all AFDC-eligible children in their care were theirs by birth or adoption.

The class action complaint for declaratory and injunctive relief was filed on October 25, 1991, and an amended complaint was filed on January 10, 1992. Joint Appendix ("J. App."), 1. Plaintiffs alleged that California's non-sibling filing unit rule violates various provisions of the federal regulations governing the AFDC program.

On April 17, 1992, the United States District Court for the Eastern District of California, David F. Levi, District Judge, heard plaintiffs' motion for class certification and the parties' cross-motions for summary judgment. J. App. 1. On April 24, 1992, the court entered an order certifying a plaintiff class of "All AFDC applicants or recipients who live in households comprised of two or more non-sibling dependent children and a single caretaker relative, or relative couple, who will be affected by MPP 44-205.31 and 82-824.1." App. 15, 19-22, & 26. In that same order, the court granted plaintiffs' motion for summary judgment, App. 15 & 23-27, and on May 8, 1992, issued a permanent injunction, App. 6-11, and entered judgment, App. 5.

In granting summary judgment for plaintiffs, the district court followed *Beaton v. Thompson*, 913 F.2d 701 (9th Cir. 1990). App. 24-6. *Beaton* struck down a similar AFDC regulation of the State of Washington.

California took an appeal from the judgment. J. App. 2. California argued to the Court of Appeals for the Ninth Circuit that *Beaton* had been wrongly decided and urged the court to convene en banc, overrule *Beaton*, and reverse the judgment of the district court.[3]

On December 1, 1993, a panel of the Court of Appeals rendered an opinion affirming the judgment of the lower court. App. 1-4. While it acknowledged California's arguments that *Beaton* had been decided in error and had not taken into proper account certain state interests and the

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[3] Petitioners' initial suggestion for hearing en banc was never ruled on by the appellate court.

effect of this Court's decision in *Bowen v. Gilliard*, 483 U.S. 587 (1987), the panel invoked the doctrine stare decisis, and held it had "no authority to overrule or disregard *Beaton*; that could only be accomplished by an en banc court." App. 4.

California timely filed a Petition for Rehearing and Suggestion for Rehearing En Banc. On February 22, 1994, the court denied that petition and rejected the suggestion for a rehearing en banc. App. 28-9.

California timely petitioned for Writ of Certiorari. On September 26, 1994, this Court issued an order granting California's petition.

SUMMARY OF ARGUMENT

Pursuant to the substantial discretion Congress and the federal AFDC agency have delegated to the states to administer their AFDC programs, and constrained only by the federal family filing unit rule, the states may adopt rules governing the composition of AFDC assistance units.

In adopting such rules, the states may, without offending the federal principle of "availability" of income, require that similarly sized AFDC households be treated alike, in terms of the treatment of their income and resources and the amount of AFDC assistance they receive, whether those households include only the caretaker's own children or whether they include children who are related to the caretaker but who are not her children's siblings. Such non-sibling filing unit rules do

not presume that income from a non-legally responsible person, who happens to live in the household but is not applying for AFDC, is available to the AFDC recipients. Such rules deal only with the income and resources of the members of the assistance unit, which are all properly considered in determining the financial needs of the unit. Such rules are also consistent with the duty of the AFDC caretaker to use the financial assistance received to benefit all members of the assistance unit.

The history and intent of the federal regulations that implement the "availability" principle, as repeatedly affirmed by the federal AFDC agency, establish the states' right to adopt assistance unit composition rules in general and non-sibling filing unit rules in particular. The Second and Eighth Circuit Courts of Appeals and the Massachusetts Supreme Judicial Court have upheld state non-sibling filing unit rules, declining to follow the Ninth Circuit's decision in *Beaton v. Thompson*.

Application of California's non-sibling filing unit rule results in equitable treatment of similarly sized AFDC households and serves a legitimate interest of the State of California—conservation of limited AFDC resources.

ARGUMENT

I

IN CREATING THE AFDC PROGRAM, CONGRESS HAS LEFT TO EACH STATE CONSIDERABLE LATITUDE TO ADMINISTER ITS AFDC PROGRAM AS IT SEES FIT

AFDC is a federal-state program authorized by Title IV-A of the Social Security Act, 42 U.S.C. § 601 et seq. The program is one of "cooperative federalism." *King v. Smith*, 392 U.S. 309, 316 (1968). Its purpose is "to provide financial assistance to needy dependent children and the parents or relatives who live with and care for them." *Shea v. Vialpando*, 416 U.S. 251, 253 (1974). Congress created the AFDC program in 1935, to

> " . . . encourag[e] the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance . . . as far as practicable under the conditions in such state, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection. . . . "

42 U.S.C. § 601.

So long as a participating state administers its AFDC program pursuant to a federally approved state plan which conforms to applicable federal statutes and regulations, 42 U.S.C § 602, the federal government reimburses the state a percentage of the funds it expends, 42 U.S.C.

§ 603. *King*, 392 U.S. at 317; *Heckler v. Turner*, 470 U.S. 184, 189 (1985). Thus, in determining whether a state AFDC regulation is permissible, "the starting point of the statutory analysis [of the Social Security Act] must be a recognition that the federal law gives each State great latitude in dispensing its available funds." *Dandridge v. Williams*, 397 U.S. 471, 478 (1970). The states have "undisputed power" under the Social Security Act "to set [both] the level of benefits and the standard of need" in the AFDC program. *King*, 392 U.S. at 334; *Jefferson v. Hackney*, 406 U.S. 535, 541, 545 (1972).

It is axiomatic to the notion of "cooperative federalism" that a state electing to participate in the AFDC program has discretion to operate its program in the way it sees fit, so long as it stays within the bounds set up by Congress and the federal rule-making agency. California's non-sibling filing unit rule is squarely within the bounds of federal constraint and not outside the parameters of the state's legitimate discretion.

To qualify for receipt of AFDC assistance, a needy dependent child must meet certain age requirements, be "deprived of parental support or care because of the death, continued absence . . . or physical or mental incapacity of a parent," and live with certain specified relatives. 42 U.S.C. § 606(a)(1) & (2). Caretaker relatives qualify for assistance in addition to that provided the eligible dependent children in their care if they meet the state's financial need requirements. 42 U.S.C. § 602(a)

> In determining need, states must
>
> " . . . take into consideration any other income and resources of any child or relative claiming

> aid . . . , or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid. . . . "

42 U.S.C. § 602(a)(7)(A).

The states also must disregard certain specified income of applicants or recipients in determining need. 42 U.S.C. § 602(a)(8)(A); 45 C.F.R. § 233.20(a)(11).

In establishing conditions for AFDC eligibility, the states' standards " . . . must not exclude individuals or groups [of individuals] on an arbitrary and unreasonable basis, and must not result in inequitable treatment. . . . " 45 C.F.R. § 233.10(a)(1). Similarly, the states' " . . . determination of need and amount of payment [must] . . . be made on an objective and equitable basis. . . . " 45 C.F.R. § 233.20(a)(1).

Subject to the requirements of the federal "family filing unit rule," 42 U.S.C. § 602(a)(38), discussed below, consideration of an AFDC applicant's income and resources to determine financial "need," as required by § 602(a)(7)(A), is limited by the "availability principle." *Lewis v. Martin*, 397 U.S. 552, 555-6 (1970). That is, only such income as is "actually available for current use" by the applicant may be considered. 45 C.F.R. § 233.20(a)(3)(ii)(D).[4]

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[4] The genesis of the availability principle is this Court's decisions in *King v. Smith* and *Van Lare v. Hurley*, 421 U.S. 338 (1975). See Argument IV, below. *King* invalidated an Alabama rule that denied AFDC benefits to minor children whose mother

In general, financial eligibility for AFDC is determined by comparing the family's countable income, meaning the income after any disregards are applied, to the "standard of need" adopted by the state. The standard of need is "a yardstick for measuring who is eligible for public assistance," and states vary as to what items they consider in setting this need or eligibility standard. *Rosado v. Wyman*, 397 U.S. 397, 408 (1970). The standard of need is "a dollar figure set by each State reflecting the amount deemed necessary to provide for essential needs such as food, clothing, and shelter." *Quern v. Mandley*, 436 U.S. 725, 737 (1978). The actual amount of the aid payment is a separate calculation which "is not necessarily a function of the standard of need." *Quern*, 436 U.S. at p. 737.

California, like other states, premises its schedule of AFDC benefits (maximum aid payments or "MAP") on the assumption that families achieve economies of scale as their size increases. Thus, although the amount of benefits available increases incrementally as the size of the assistance unit increases, per capita benefits decrease.

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cohabited with a man who was not her husband. 392 U.S. at 311. *Van Lare* struck down a New York regulation that reduced pro rata the shelter allowance to AFDC recipients who shared their household with nonpaying lodgers. 421 U.S. at 339-40. See also *Lewis v. Martin*, invalidating California rule that presumed non-legally obligated stepfather or man assuming role of spouse ("MARS") contributed non-AFDC resources to AFDC applicants. 397 U.S. at 560.

See Cal. Welfare & Institutions Code § 11450;[5] *Bray v. Dowling*, 25 F.3d 135, 137 (2d Cir. 1994); *Wilkes v. Gomez*, 32 F.3d 1324, 1326 (8th Cir. 1994).

Caretakers of AFDC-eligible children are required to use the assistance payments they receive in the best

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[5] Section 11450 currently establishes a schedule of maximum aid payments which have been modified by overall percentage reductions in 1992 & 1993, (per capita amounts are shown for comparison, but are not part of the statute):

Number of eligible needy persons in the same household	Maximum aid payment	[Per capita amt.]
1	$ 299	$299
2	490	245
3	607	202.33
4	723	180.75
5	824	164.80
6	926	154.33
7	1,017	145.29
8	1,108	138.50
9	1,197	133
10 or more	1,286	128.60

interests of the aided children in their care. 42 U.S.C. § 605.[6]

Prior to determining financial need and calculating the amount of AFDC benefits, however, the states first group AFDC applicants into "filing" or "assistance" units. See Action Transmittal ACF-AT-94-6, App. 33, 43-5. This is necessary because until the members of the family applying for aid are determined, the calculation of family's income and resources and determination of the family's need for assistance cannot be accomplished. An assistance unit consists of "the group of individuals whose income, resources and needs are considered for purposes of determining eligibility and the amount of payment." 45 C.F.R. § 206.10(b)(5).

Before 1984, AFDC applicants living in the same household could choose to exclude from the assistance unit a parent or child who, for example, had significant income or resources that if counted among the family's resources would render the family ineligible for assistance. *Bowen v. Gilliard*, 483 U.S. 587, 590 (1987).[7]

---

[6] Section 605 provides, in pertinent part, that "Whenever the State agency has reason to believe that any payments of aid to families with dependent children made with respect to a child are not being or may not be used in the best interests of the child, the State agency may . . . " provide counseling for the child's caretaker(s), advise the caretaker(s) that their actions may result in substitution of protective payments, the appointment of a guardian, or imposition of criminal or civil penalties.

[7] While *Bowen* addressed procedural due process and equal protection claims not at issue here, and upheld Congress's authority to adopt the family filing unit rule, *Bowen* in no way holds that only Congress can dictate how the states can group AFDC applicants into assistance units.

In 1984 Congress, in an effort to reduce federal expenditures, enacted the Deficit Reduction Act of 1984, 98 Stat. 494. Among the Act's provisions was an amendment to the Social Security Act, providing that a family's eligibility for AFDC "must take into account, with certain specified exceptions, the income of all parents, brothers, and sisters living in the same home." *Bowen*, 483 U.S. at 589; 42 U.S.C. § 602(a)(38); see also 45 C.F.R. § 206.10(a)(1)(vii).[8] The federal AFDC policy embodied in the DEFRA amendment is sometimes referred to as the "family filing unit rule." See, e.g., *Skidgel v. Maine Dept. of Human Services*, 994 F.2d 930, 934 (1st Cir. 1993).

This Court concluded in *Bowen v. Gilliard* that Congress's intent in adopting the family filing unit rule was unambiguous, especially in light of the legislative history, which the Court's decision quotes from the Senate Finance Committee's report:

> "Explanation of Provision
>
> "The provision approved by the Committee would require States to include in the filing unit the parents and all dependent minor siblings (except SSI recipients and any stepbrothers and stepsisters) living with a child who applies for, or receives AFDC. . . .
>
> "This change will end the present practice whereby families exclude members with income in order to maximize family benefits, and will ensure that the income of family members who

---

[8] "A caretaker relative other than a parent is not required to be part of a dependent child's assistance unit." *Wilkes v. Gomez*, 32 F.3d at 1327, n. 2.

> live together and share expenses is recognized and counted as available to the family as a whole."

S. Print No. 98-169, p. 980 (1984), quoted at 483 U.S. at 593-4.

Apart from the federal mandatory family filing unit rule, no federal requirement, including the availability of income principle, constrains the states in deciding which AFDC applicants should be grouped together into assistance units. *See, Allen v. Hettleman*, 494 F.Supp. 854, 861 (D. Md. 1980) (quoting with approval pre-1984 statement of then Secretary of the United States Department Health and Human Services: "The composition of an AFDC assistance unit is not defined in federal law.")

II

SUBJECT ONLY TO THE FEDERAL REQUIREMENT THAT ALL IMMEDIATE FAMILY MEMBERS LIVING IN THE HOUSEHOLD BE INCLUDED IN ONE FILING UNIT, EACH STATE MAY GROUP NEEDY DEPENDENT CHILDREN LIVING WITH A CARETAKER RELATIVE IN A HOUSEHOLD INTO A SINGLE FILING UNIT

Recognizing that there is essentially no practical difference—in terms of the amount of public financial assistance needed—between, for example, an equally needy family composed of an adult caretaker and two of her own children and an adult caretaker and one of her own children and her nephew, California adopted the non-sibling filing rule at issue in this case. MPP § 82-824 provides simply that two or more assistance units in the same home shall be combined into one assistance unit

when there is only one caretaker relative. App. 52. Application of this rule means that all families consisting of a caretaker and two children, will, all else being equal, receive the same monthly welfare grant.

Such a rule certainly does not violate the family filing unit rule, 42 U.S.C. § 602(a)(38). Indeed it is fully consistent with the federal policy behind that rule. As noted above, Congress adopted the family filing unit rule as one of several measures to reduce federal spending. The non-sibling filing unit rule saves the state money because it provides similarly needy family groups headed by a single caretaker with the same grant amount, so long as all the children in the home are related to the caretaker but irrespective of whether all the needy children in the household are siblings of one another.

Moreover, California's non-sibling filing unit rule operates in a similar fashion to the federal family filing unit rule. California's rule ensures that the income available to each dependent child, who applies for AFDC and lives under one roof with a relative caretaker, is "counted as available to the family as a whole." S. Print No. 98-169, p. 980 (1984).

That no federal statute or regulation prohibits participating states from adopting such a rule has been confirmed on several occasions since 1976 by the Department of Health and Human Services and its predecessor agency, the Department of Health, Education, and Welfare. In addition, the Massachusetts Supreme Court, the Second Circuit, and the Eighth Circuit have all upheld similar state rules.

A. The Federal Agency Charged With Interpreting And Administering The AFDC Program Has Affirmed The State's Right To Adopt A Non-Sibling Filing Unit Rule

The Department of Health and Human Services firmly supports the view that it is within the states' discretion whether or not to include needy non-siblings and their caretaker relative and her own needy children, if any, into one assistance unit when all live in the same household.

In January 1986 the federal agency issued Action Transmittal No. SSA-AT-86-1.[9] The purpose of this transmittal was to instruct the states on proper implementation of the family filing unit rule created by Congress in DEFRA, 42 U.S.C. § 602(a)(38). App. 44. First, the agency explained which family members living in the same household must be included in the assistance unit under the rule, namely the parent(s) of a dependent child and the brothers and sisters of the dependent child, who are themselves dependent children; next, the agency listed those persons who must be excluded from the unit, including recipients of SSI and certain aliens. App. 46-7. Consistent with the intent of the family filing unit rule, the agency specified that, "All income and resources of the individuals required to be included in the assistance unit must be considered in determining eligibility and payment for the assistance unit." App. 48. Finally, after discussing the consolidation of assistance units when an

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[9] The complete text of this transmittal is reproduced in the Appendix to the Petition For Writ of Certiorari in this case, at App. 44-50.

individual is required to be in two assistance units in the same household,[10] the agency made clear that it is within each state's discretion whether or not to adopt a non-sibling filing unit rule.

> "Outside of . . . [the family filing rule and the requirement that assistance units be consolidated when an individual must be a member of two units in the same household] *it is up to the State* to establish policy on the number of assistance units in the household, e.g., when an individual not related to a member of the assistance unit as a parent, brother or sister lives in the household and files for assistance."

App. 50, emphasis added.

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[10] The examples of required consolidation, given in the Action Transmittal are both variants of the family filing unit rule: (1) Assume a household consisting of a mother and her three children; one of the children has a child; if AFDC is requested for the grandchild, all household members must be in one assistance unit, because the minor mother must be both in the assistance unit with her child and in the assistance unit with her siblings; and, (2) Assume a mother and her child live with her disabled husband and his child; all are on aid but each parent and his or her child form their own assistance unit; then the parents have a child of their own; if AFDC is requested for that child, all household members must be combined into one unit because that child is required to be in each of the two existing assistance units with his or her half-siblings.

These corollaries of the federal family filing unit rule do not implicate the states' discretion to adopt a non-sibling filing unit rule because in each example the combined assistance units have not one but two caretakers.

On March 16, 1994, the federal agency issued Action Transmittal, ACF-AT-94-6.[11] AT-94-6 "re-state[s] the policy governing the authority of State agencies to consolidate assistance units in certain situations and to clarify that such a consolidation *does not conflict* with the Federal regulations that prohibit assuming the availability of income from certain persons without actually determining that it has been contributed." App. 34. The transmittal instructs that two *distinct* steps must be taken before AFDC assistance is awarded: (1) the state must determine the composition of the assistance unit and (2) the state must establish eligibility, i.e., determine the income and resources available to the members of the unit. App. 34-5. Then, after discussing the requirements of the family filing unit rule, 42 U.S.C. § 602(a)(38) and 45 C.F.R. § 206.10(a)(1)(vii), and the rule requiring consolidation of assistance units when a person is required to be in two or more assistance units in the same household, 45 C.F.R. § 233.20(a)(1)(iii), the federal agency echoes its pronouncement eight years before: "Apart from complying with these two Federal requirements, *States are authorized* to set the State-wide policy, to be applied to all cases, whether and under what conditions two or more assistance units in the same household are to be consolidated or retained as separate units. [Citations omitted.]" App. 35.

AT-94-6 goes on to analyze each of the federal regulations *Beaton* holds were violated by Washington's nonsibling filing unit rule (and impliedly by California's rule

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[11] The complete text of this action transmittal is reproduced in the appendix to the Petition for Writ of Certiorari at App. 33-43.

as well), dismissing each federal regulation in turn as a basis for invalidating such a rule. App. 37-39.[12]

AT-94-6 also provides two examples of *permissible*, state, assistance unit rules. App. 40-1. In each example, the household consists of a grandmother caretaker of two dependent children, who lives with her daughter, the daughter's three children (not siblings of the first two children), and the daughter's male friend. Initially, there are two assistance units in the household: (1) the grandmother with her two dependent children and (2) the daughter and her three children. In each example, the daughter dies, the grandmother assumes care of her three grandchildren, and the daughter's male friend remains in home. The only difference between the examples is that in the first the state has adopted a non-sibling filing unit rule, like California's, so the grandmother and all five children are combined into one assistance unit and the income and resources of all six persons are considered available to the unit. In the second example, the state has not adopted such a rule, so there are still two assistance units: (1) the grandmother and her two dependent children and (2) the three children of her deceased daughter.[13] App. 40-1.

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[12] The legal bases for the federal agency's interpretation are discussed in more detail in arguments III and IV, below.

[13] Although the grandmother is the caretaker of her grandchildren, the federal family filing unit rule, 42 U.S.C. § 602(a)(38), does not require that she be a member of the assistance unit that includes her grandchildren because she is not their natural or adoptive parent.

Lastly, echoing several decisions of this Court and couching its comments in terms of the requirement that states must determine need and set assistance levels "on an objective and equitable basis," 45 C.F.R. § 233.20(a)(1), AT-94-6 concludes:

> "The program authorizes a State to determine need standards and payment standards that accommodate the balance of equity in that State. The decision to consolidate assistance units or to retain separate units in a single household is also a policy determination that a State makes balancing the equities. A State might opt to consolidate assistance units in order to promote equitable treatment for households of similar composition: all households having a parent or caretaker relative and four eligible children, for example, would receive the same level of payment."

App. 42.

The federal agency's unequivocal and long-standing support[14] of the states' discretion to adopt a rule requiring the inclusion of needy siblings and non-siblings in one assistance unit is entitled to substantial deference.

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[14] In addition to the broad instruction provided to all the states in AT-94-6, the Assistant Secretary for Children and Families, Jo Anne Barnhart executed a declaration that was filed in the district court below. App. 53-5. There Ms. Barnhart discussed the boundaries of the federal family filing rule and affirmed that California's non-sibling filing unit rule is "in compliance with federal statutes and regulations." App. 55. See also *Bray v. Dowling*, 25 F.3d 135, 142 (quoting from October 13, 1976, Department of Health, Education and Welfare memorandum to the same effect).

Courts must give substantial deference to an agency's interpretation of its own regulations. *Martin v. Occupational Safety and Health Comm'n*, 499 U.S. 144, 150-151 (1991).

In a recent case involving the federal agency's interpretation of regulations in the similarly complex Medicare program. this Court instructed,

> "[W]e must defer to the Secretary's interpretation unless an 'alternative reading is compelled by the regulation's plain language or by some other indications of the Secretary's intent at the time of the regulation's promulgation.' [Citation omitted.] This broad deference is all the more warranted when, as here, the regulation concerns 'a complex and highly technical regulatory program,' in which the identification and classification of relevant criteria necessarily entail the exercise of judgment grounded in policy concerns. [Citation omitted.]"

Thomas Jefferson University v. Shalala, ___ U.S. ___, 114 S.Ct. 2381, 2386-87 (1994).

For these same reasons, the Court should defer to the federal agency's interpretation of its own regulations and uphold the states' right to decide how AFDC applicants should be grouped into assistance units, limited only by the specific constraints of the federal family filing unit rule.

B. Recent Decisions Of Two Courts Of Appeals And Of The Supreme Judicial Court Of Massachusetts Have Rejected Challenges To State Non-Sibling Filing Unit Rules, Finding Such Rules A Permissible Exercise Of State Authority And Disagreeing With The Ninth Circuit's Decision In Beaton v. Thompson

The Supreme Judicial Court of Massachusetts upheld that state's non-sibling filing unit rule in *MacInnes v. Commissioner of Public Welfare*, 412 Mass. 790, 593 N.E.2d 222 (1992). The plaintiffs in *MacInnes*, dependent children, whose parents were unwilling or unable to care for them, lived with relatives and their relatives' children, who were also receiving AFDC.[15] As in this case, the plaintiffs claimed the Massachusetts' rule violated 42 U.S.C. § 602(a)(7)(A) and 45 C.F.R. §§ 233.20(a)(2)(vii), 233.20(a)(3)(ii)(D), and 233.90(a)(1). 593 N.E.2d at 225.

Massachusetts's high court affirmed the trial court's determination that the state's rule did not run afoul of any federal requirements. Moreover, from the federal requirement that AFDC benefits are to be used in the best interests of the needy children, 42 U.S.C. § 605, the court found an obligation that the children's caretaker must use the entire AFDC grant, not just the increment attributable to the additional children for the benefit of the entire assistance unit. 593 N.E.2d at 225.

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[15] Prior to the state's adoption of its non-sibling filing unit rule, the three plaintiffs received a separate monthly grant of $352. After their assistance unit was consolidated with their caretakers' unit, the caretakers received $95 more a month in assistance for a net reduction of monthly income of $257. 593 N.E.2d at 225.

MacInnes also rejected arguments based on the equal protection clause of the Fourteenth Amendment to the United States Constitution and the Massachusetts Declaration of Rights, finding that the state's rule was "rationally related to the furtherance of a legitimate State interest," to wit, decreasing state spending and fairly distributing benefits among competing needy families. 593 N.E.2d at 227. The plaintiffs' arguments that the state's rule ran afoul of federal regulations requiring equitable treatment suffered a similar fate. 593 N.E.2d at 227.

The United States Court of Appeals for the Second Circuit upheld New York's non-sibling filing unit rule in *Bray v. Dowling*, 25 F.3d 135 (1994). *Bray* comprehensively analyzes all pertinent federal regulations, as well as the applicable federal case law, and acknowledges the consistent and long-standing position of the federal AFDC agency regarding the validity of state non-sibling filing unit rules. "Both [the current and former federal] agencies have consistently taken the position that the states have the option to treat a relative caretaker and minor children in her household for whom she is not legally responsible as a single AFDC assistance unit." *Bray*, 25 F.3d at 142.

The court first cites an agency memorandum dated October 13, 1976, in which an HEW administrator opined that:

> " 'States may . . . provide for two AFDC payments in the case of a mother who is the caretaker relative for her own children and her sister's children. In such a situation, the State may establish two budget units or it may

> include all children in one AFDC payment. Federal matching would be available in either budgeting method.' "

25 F.3d at 142

Bray holds that the uncertainty of financial support to the assistance unit (from non-needy individuals not part of the assistance unit, e.g., a man-in-the-house or a lodger), that animated the decisions in *King v. Smith*, 392 U.S. 309 and *Van Lare v. Hurley*, 421 U. S. 338 (1975) and the resulting federal regulations, is absent in households affected by the non-sibling filing unit rule. *Bray*, 25 F.3d at 144.

> "Federal law can be read to mandate 'that the caretaker relative use all of the [AFDC] grant for the benefit of everyone in the assistance unit.' (citation)
>
> ". . . .
>
> "This legal obligation to spend the grant on behalf of the children in the AFDC unit distinguishes this case from those involving presumption of support from outside income. [Citations omitted] . . . We therefore conclude that the . . . [non-sibling filing unit rule] under which all children living with an adult caretaker relative are considered part of one AFDC assistance unit even if the household contains children for whom the caretaker is not legally responsible, does not contravene §§ 233.20(a)(2)(viii) and 233.90(a)(1)."

Bray, 25 F.3d at 144-145, citing *MacInnes v. Commissioner* and *Jackson v. O'Bannon*, 633 F.2d 329, 336 (3d Cir. 1980).

Bray declines to follow *Beaton*, because "*Beaton* did not recognize or discuss the distinction between a single caretaker who is obligated to expend AFDC funds for the benefit of all the minor children in her household and a non-legally responsible individual who has no corresponding obligation." 25 F.3d at 145. The Second Circuit regarded this distinction as dispositive.

In this case, notwithstanding the federal agency's express and repeated affirmations of the extent of each state's discretion regarding composition of AFDC assistance units, the welfare recipients contend that only the Congress has the power to require certain family members to be in the same assistance unit, and that the states are not free to require inclusion or consolidation of non-siblings prior to congressional action. Respondent's Brief In Opposition to Petition for Writ of Certiorari, p. 7. The Eighth Circuit rejected just such an argument raised by the plaintiffs in *Bray*.

> "It would be anomalous to conclude that, as a part of an act designed to reduce budget outlays, Congress would prohibit states from employing the cost-saving measure of including members of an extended family who reside together in a single AFDC assistance unit."

25 F.3d at 142. Thus, not only does the federal agency's long-standing interpretation of its own regulations support the validity of California's non-sibling filing unit rule, but the very congressional policy underlying the family filing unit rule, 42 U.S.C. § 602(a)(38), supports it as well.

The United States Court of Appeals for the Eighth Circuit upheld Minnesota's non-sibling filing unit rule in

Wilkes v. Gomez, 32 F.3d 1324 (1994). Concurring with *Bray* and rejecting *Beaton*, the Eighth Circuit likewise held that there is a critical distinction between a single caretaker relative who is obligated to expend AFDC funds for the benefit of all the minor children in her household and a non-legally responsible individual who has no corresponding obligation to do so (and, thus, whose income and resources the state may not *presume* are available to support the needy child). 32 F.3d at 1330.

Like the Second Circuit in *Bray*, the Eighth Circuit accorded substantial deference to the federal agency's long-standing position supporting the validity of the non-sibling filing unit rule. 32 F.3d at 1329. The court found the federal agency's construction of the availability principle faithful to the plain language of the relevant regulations and concluded Minnesota's non-sibling filing unit rule did not

> "reduce payments based on 'the presence *in the household* of a non-legally responsible individual; and the [state] agency will not assume any contribution from such individual for the support *of the assistance unit*. . . . ' By its terms, . . . [45 C.F.R. § 233.20(a)(2)(viii)] addresses the assets of members of the household that (sic) are not members of the assistance unit. Members of the assistance unit are bound together by the caretaker's obligation to spend the AFDC funds in their best interests. *See* 42 U.S.C. § 605."

Wilkes, 32 F.3d at 1328-9, emphasis in original.

The Courts of Appeals' decisions in *Bray* and *Wilkes* and the Massachusetts high court's decision in *MacInnes*

correctly, and persuasively, analyze the constraints of the federal availability principle and accord proper, and substantial, deference to the policy interpretations of the federal AFDC agency. *Beaton* does not, and, thus, the decision below which simply adopts the analysis and holding of *Beaton* should be reversed.[16]

III

FEDERAL RULES GOVERNING AVAILABILITY OF INCOME DO NOT CONSTRAIN THE STATES FROM GROUPING NEEDY SIBLINGS AND NON-SIBLINGS RESIDING WITH THEIR CARETAKER RELATIVE INTO ONE ASSISTANCE UNIT

The Ninth Circuit in *Beaton* holds that the effect of Washington's non-sibling filing unit rule " . . . is to presume that the non-legally responsible relative with whom the [non-sibling] child lives is contributing to the support of the child without proof of actual contribution." 913 F.2d at 704. *Beaton* is premised on a faulty application of the federal "availability" principle, as embodied in the three federal regulations cited in the decision. What the Ninth Circuit failed to recognize is that the availability principle comes into play only *after* the state has grouped the household's applicants into an assistance unit.

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[16] On November 3, 1994, the Supreme Court of North Carolina, relying on *Bray* and *Wilkes*, giving broad deference to the construction of the federal regulations by the federal AFDC agency, and declining to follow *Beaton*, upheld that state's non-sibling filing unit rule. *Morrell v. Flaherty*, ___ S.E.2d ___ (N.C. Sup. Ct. 1994), No. 203 PA93—Mecklenberg.

The first step in determining eligibility for AFDC is to identify the person(s) for whom assistance is sought, that is, to group the applicants into an assistance or filing unit. AT-94-6, App. 34. The federal mandatory family filing unit rule, 42 U.S.C. § 602(a)(38), requires just that. As discussed above in Argument I, in an effort to reduce federal AFDC expenditures, in 1984 Congress mandated that the parents and all dependent, minor siblings living with a child who applies for, or receives, AFDC must be combined into a single assistance unit. The express purpose of this rule is so that the income and resources of all family members (who can reasonably be presumed to share their income and resources with the household) can be considered to determine whether the family's "need" meets the state's AFDC standard of need. *Bowen v. Gilliard*, 483 U.S. 587, 593-594; 45 C.F.R. § 206.10(a)(1)(vii); see also SSA Action Transmittal 86-1, App. 44.

That the state's determination of who is in the assistance unit must *precede* the state's counting of income and resources of the members to determine financial need is obvious. Only after the members of the assistance unit are determined, can the state proceed to the second step: ascertaining whether and to what extent the applicants are financially needy. AT-94-6, App. 34-35. Indeed, federal law mandates the states to " . . . take into consideration any income and resources of any child or relative claiming aid to families with dependent children. . . . " 42 U.S.C. § 602(a)(7)(A).

A non-sibling filing unit rule, like California's, is closely akin to the federal family filing unit rule. The state rule functions in much the same way and furthers identical state interests. *Bray*, 25 F.3d at 142. Both rules

group persons whose income and resources must be considered in determining the financial need of the unit. *Skidgel v. Maine Dept. of Human Resources*, 994 F.2d 930, 934 (1st Cir. 1993). Both rules are based on the commonsense assumption that families share income and resources to support the household.

The principle of "availability" governs what is considered "income" for the purposes of 42 U.S.C. § 602(a)(7)(A). *Gorrie v. Bowen*, 809 F.2d. 508 (8th Cir. 1987). "The [availability] principle prevents the states from 'relying on imputed or unrealizable sources of income artificially to depreciate a recipient's need.' [Citations]." 809 F.2d at 515.

It is well established, however, that attribution of income from an individual who *must* be included in the filing unit, because of the family filing unit rule, does not violate the principle of availability, even where the person whose income is deemed available has no legal obligation to use that income to support others in the assistance unit. *Bowen v. Gilliard*, 483 U.S. 587, 600, 605, n. 5 (1987) (availability principle not violated by deeming child support received for one child in the family unit available to all); *Gorrie v. Bowen*, 809 F.2d at 515-516 (no need to make factual determination that Title II social security benefits and child support payments actually available); accord, *Bradley v. Austin*, 841 F.2d 1288, 1294-1295 (6th Cir. 1988) (follows *Gorrie* on treatment of Title II benefits); *Oliver v. Ledbetter*, 821 F.2d 1507, 1512-1513 (11th Cir. 1987) (applies rule in *Bowen v. Gilliard* to OASDI benefits received by child in assistance unit).

By enacting the mandatory family filing unit rule, Congress " . . . change[d] the focus of the AFDC need determination away from resources available to individuals and toward the resources available to all of the individuals in an AFDC family." *Gorrie*, 809 F.2d at 515. In *Gorrie* the Eighth Circuit sustained the Secretary of Health and Human Services' assertion that this congressional change in AFDC policy and procedure was "intended to create a legislative presumption of availability of income as to the individual and as to the family in recognition of the fact that family members who live together most likely share expenses." *Id.* at 516.

Beaton thwarts the states' efforts to implement an assistance unit policy similar in application to the mandatory family filing unit rule because, in the Ninth Circuit's view, the non-sibling filing unit rule improperly attributes income of a non-legally responsible adult, i.e., the caretaker relative, to the non-sibling child simply because they live in the same household. *Beaton*, at 704. This holding, however, is at odds with this Court's holding in *Bowen v. Gilliard*, that attribution of income between individuals who *must* be included in the same assistance unit does not violate the principle of availability, even where a legal obligation of support is absent. 483 U.S. at 593, fn. 5, 596-597; see also *Gorrie*, 809 F.2d at 515-516.

In *Beaton* the Ninth Circuit committed a fundamental error by applying rules governing the determination of financial need to the composition of the assistance unit. As the First Circuit stated in *Skidgel v. Maine Department of Human Services*, the courts have overwhelmingly rejected the argument that a child must be determined to

be financially needy before that child is placed in the family filing unit. 994 F.2d at 938.

AFDC is aid to *families* with dependent children. *Beaton* wrongly bars California from treating as a "family" a household composed of the caretaker's needy children and their needy cousins, nephews, or nieces. Federal AFDC law expressly permits extended family members to receive assistance with their needy children relatives. 42 U.S.C. § 606(b); 45 C.F.R. § 233.10(b)(2)(ii)(b). *Beaton* frustrates, without any reasonable support in federal law, California's legitimate exercise of its discretion to decide how AFDC applicants should be grouped in assistance units.

IV

THE HISTORY OF THE FEDERAL REGULATIONS IMPLEMENTING THE "AVAILABILITY" PRINCIPLE DEMONSTRATES THAT THE REGULATIONS WERE NEVER INTENDED TO PREVENT STATES FROM ADOPTING RULES GOVERNING ASSISTANCE UNIT COMPOSITION

Beaton holds that three federal regulations prohibit a state from adopting a non-sibling filing unit rule, 45 C.F.R. §§ 233.90(a)(1), 233.20(a)(2)(viii), and 233.20(a)(3)(ii)(D). 913 F.2d at 704. None of these regulations was meant to be applied to the factual situations addressed by the non-sibling filing unit rule.

Section 233.90(a)(1) prohibits the states from finding an otherwise needy child ineligible on the *assumption* that the income of a "substitute parent" or "man-in-the-house" is available to support the child, leading to the

conclusion that the child is not deprived of parental support. This regulation was codified to implement this Court's decision in *King v. Smith*, 392 U.S. 309. *Van Lare v. Hurley*, 421 U.S. 338, 345.

In *King* this Court struck down an Alabama AFDC rule that considered "any able-bodied man, married or single," who was living in the household to be a "substitute father" of all the needy children in the home and, thus, presumed his income "available" to support the children. 392 U.S. at 313.

In the context of *King*, it is apparent that § 233.90(a)(1) was intended to remedy a specific gap in federal law by defining what Congress meant by the term "parent." The federal regulation was not intended to prevent the states from grouping a caretaker relative's own needy children and other related needy children living in the same household into one assistance unit, or to preclude the consideration of income and resources of each of the members of such an assistance unit in determining the financial need of the unit as a whole. *Bray*, 25 F.3d at 144.

Section 233.20(a)(3)(ii)(D) provides that income and resources can be considered "available" only when they are actually available. It implements 42 U.S.C. § 602(a)(7)(A), *Lewis v. Martin*, 397 U.S. 552, 557 (1970); *Wilkes*, 32 F.3d at 1328, which specifies that the state agency

> "shall, in determining need, take into consideration any other income and resources of any child or relative claiming [AFDC], or any other individual living in the same home as such child

> and relative whose needs the State determines should be considered in determining the need of the child or relative claiming aid. . . . "

This regulation prohibits the states from assuming support contributions to the assistance unit from persons who are *not* seeking AFDC benefits, *Lewis*, 397 U.S. at 556-557; it was not intended to preclude the states from counting the income and resources of the members of the assistance unit as available to the unit, which is what the non-sibling filing unit rule accomplishes.

Lastly, section 233.20(a)(2)(viii) in pertinent part provides that AFDC benefits will not be prorated or otherwise reduced solely because of the presence in the household of a non-legally responsible individual. This regulation was adopted to implement this Court's decision in *Van Lare v. Hurley*, 421 U.S. 338. *Bray*, 25 F.3d at 144. In *Van Lare* this Court, after restating the principles laid down in *King* and *Lewis*, invalidated New York's "lodger" regulation which reduced benefits to the assistance unit because it assumed contributions from a non-needy, non-legally responsible person who lived in the household. *Van Lare*, 421 U.S. at 346. This regulation was not intended to apply to the income and assets of persons who are members of the assistance unit. *Wilkes*, 32 F.3d at 1329-30; AT-94-6, App. 37.

Beaton misperceived the intent and effect of these federal regulations implementing the availability principle partly because of the Ninth Circuit's reliance on *McCoog v. Hegstrom*, 690 F.2d 1280 (9th Cir. 1982), and *Gurley v. Wohlgemuth*, 421 F.Supp. 1337 (E.D. Pa. 1976). Neither case is apposite to the policy that animates the non-sibling filing unit rule.

In *McCoog* the Ninth Circuit invalidated an Oregon AFDC regulation which automatically reduced the shelter component of an AFDC assistance grant when a dependent child lived with a caretaker relative who was not needy and was not in the assistance unit. 690 F.2d at 1285. The non-sibling filing unit rule does not presume income to be available to the assistance unit from any individual, including a caretaker relative, who is not herself a member of the assistance unit. *McCoog* simply applied the federal "availability" principle to a variant of the state rules struck down by this Court in *King, Van Lare,* and *Lewis;* hence, *McCoog* is of no assistance in this case.

At issue in *Gurley v. Wolgemuth* was a Pennsylvania AFDC regulation that combined two families, each headed by a separate caretaker relative, into one assistance unit because they were living in the same household. 421 F.Supp. at 1338. Relying on *Lewis, Van Lare,* and two district court cases[17], *Gurley* struck down the state regulation because it constituted an improper presumption of income between the two independent caretaker relatives. 421 F.Supp. at 1345. Unlike the Pennsylvania rule at issue in *Gurley,* California's non-sibling filing unit rule groups siblings and non-siblings with their relative caretaker only where there is a single caretaker relative responsible for all the needy children in the household.

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[17] These cases invalidated state rules that set a lower scale of benefits for a child who resided with a non-applicant relative or MARS (man assuming the role of a spouse). *Hoehle v. Likins,* 405 F.Supp. 1167 (D.Minn. 1975); *Jenkins v. Georges,* 312 F.Supp. 289 (W.D.Pa. 1970).

The non-sibling children could only be a separate assistance unit if they lived in a separate household with a different adult caretaker. App. 51 and 52.

Because California's non-sibling filing unit rule does not presume income of individuals who themselves are not members of the assistance unit to be available to the members of the unit, neither the availability principle nor the federal regulations that implement it are implicated.

V

THE NON-SIBLING FILING UNIT RULE ACHIEVES EQUITY IN ASSISTANCE PAYMENTS TO FAMILY GROUPS OF SIMILAR SIZE

Federal law requires equity in the states' disbursement of AFDC assistance. The states must determine the need and amount of assistance for all applicants and recipients on an objective and equitable basis. 45 C.F.R. § 233.20(a)(1)(i); see also § 233.10(a)(1). The non-sibling filing unit rule fosters equity both in the determination of need and in the calculation of the amount of assistance because, assuming equally needy recipients, households of similar size receive the same amount of AFDC assistance, whether they include non-siblings or not.

Because California's rule has been enjoined by the courts below, gross inequities in the assistance received by similarly-sized families in California have been created. The following examples graphically illustrate the impact of the *lack* of a non-sibling filing unit rule.[18]

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[18] The AFDC payment levels used to calculate the assistance amounts in the case examples in the text are those which

Case 1:

Needy caretaker, plus 3 of her own children (Assistance Unit of 4)

Total monthly AFDC grant for 4 persons: $ 723

Case 2:

Needy caretaker, plus 2 of her own children (Assistance Unit of 3) AFDC grant $ 607/month

plus one niece (Assistance Unit of 1) AFDC grant $ 299/month

Total monthly AFDC grant for 4 persons: $ 906

Case 3:

Needy caretaker, plus her own child (Assistance Unit of 2) AFDC grant $ 490/month

plus one niece (Assistance Unit of 1) AFDC grant $ 299/month

plus another niece (Assistance Unit of 1) AFDC grant $ 299/month

Total monthly AFDC grant for 4 persons: $ 1088

Case 4:

Non-needy caretaker (ineligible for AFDC)

plus one niece (Assistance Unit of 1) AFDC grant $ 299/month

plus another niece (Assistance Unit of 1) AFDC grant $ 299/month

plus another niece (Assistance Unit of 1) AFDC grant $ 299/month

plus another niece (Assistance Unit of 1) AFDC grant $ 299/month

Total monthly AFDC grant for 4 persons: $ 1196

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are in effect in California at the present time. The state has reduced the maximum aid payment amounts several times since the Complaint in this action was filed. A similar set of case examples that appeared at page 8 of California's Petition for Writ of Certiorari, used higher grant levels which have been superseded.

If California's non-sibling filing unit rule were in effect, the households in examples 2, 3, and 4, above, would receive the same amount of financial assistance as the similarly sized household in example 1. It is reasonable for California to assume that the same economies of scale apply to similarly sized households, whether the children are siblings or not. This assumption rests both on common sense and on the legal duty imposed on the caretaker by 42 U.S.C. § 605 to use the AFDC payments in the best interests of all the needy children in the assistance unit. In other words, whether the children in the household are siblings of one another or not makes absolutely no difference in terms of their financial need. Once grouped into a single assistance unit, the state must consider the income and resources of each as available to all the other members of the unit. 42 U.S.C. § 602(a)(7)(A); *Wilkes v. Gomez*, 32 F.3d at 1329, n. 7 (nothing in Minnesota's non-sibling filing unit rule requires non-sibling child with income or resources making her ineligible for AFDC to be part of AFDC assistance unit).[19]

Respondents have argued in this case that the non-sibling filing unit rule works an inequity upon members

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[19] When a child or caretaker relative is included in the assistance unit, his or her income and resources must be counted in determining the financial need of the unit. But, when the family filing unit rule does not require a child, i.e, a non-sibling, or a caretaker relative, i.e., a non-parent, to be included in the unit, such child or caretaker may simply not apply for AFDC assistance and thus preclude the state from considering his or her income or resources as available to the unit, unless the state can demonstrate *actual* or *legal* availability. 45 C.F.R. § 233.20(a)(3)(ii)(D).

of the class affected by the state's policy. First Amended Complaint, ¶ 45(d) and (e); Respondents' Brief in Opposition to Petition for Writ of Certiorari, pp. 16-18. While it is true that if the non-sibling children in examples 2-4, above, lived with a caretaker who was not already part of an AFDC assistance unit, they would receive their own AFDC grant which would be higher on a per capita basis than the amount of assistance they receive when combined with their non-siblings.[20] However, in *each* household only four AFDC-elibigle persons depend on the grant for their support.

The Eighth Circuit in *Bray v. Dowling* rejected just such an "equity" argument. *Bray* refused to second-guess New York's choice to "premise uniformity [of application of the state's standard of assistance throughout the state] on identical treatment of similarly sized households receiving AFDC assistance in which one caretaker relative is required to expend the AFDC funds in the best interests of all members of the households." 25 F.3d at 146. Although the New York welfare recipients preferred a uniformity based on non-sibling dependent children's receiving the same amount of assistance whether they are in an AFDC or a non-AFDC household, the court refused to require it, echoing this Court's decision in *Dandridge v. Williams*, 397 U.S. at 487: " '[I]ntractable economic, social,

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[20] For example, in the case of plaintiff Barbara Moore, under California's non-sibling filing unit rule she would receive a total of $723 for the four dependent children for whom she cares. In the absence of a non-sibling filing unit rule, Moore receives $490 for her son and daughter, and another $490 for her two grandchildren, totalling $980 in AFDC assistance to the household.

and even philosophical problems presented by public welfare assistance programs' [are] more appropriately decided by state officials than federal courts." 25 F.3d at 146.

Having chosen to provide AFDC households of the same size with identical amounts of assistance, California's non-sibling filing unit rule complies with federal requirements for equitable administration of AFDC and should be upheld.

CONCLUSION

California's non-sibling filing unit rule is a wholly proper exercise of the discretion left to the states by Congress and the federal agency. The rule does not run afoul of the "availability principle" or of any other federal constraint on the states in administering their AFDC programs. The rule promotes equity in the provision of AFDC assistance to similarly sized households. The federal agency responsible for interpreting the federal statutes and implementing the AFDC program has consistently affirmed the states' right to adopt such a rule. Two United States Courts of Appeals and the Supreme Judicial Court of Massachusetts have upheld similar rules adopted by other states.

The decisions of the Ninth Circuit in this case and in *Beaton v. Thompson*, which it followed, are erroneous, without substantive support, and contrary to the intent of the very regulations they deem to be violated by the non-sibling filing unit rule. These decisions frustrate the congressional grant of authority to the states to provide

public assistance in the manner most practicable in each state. They are directly contrary to a substantial body of federal case law, including decisions of this Court.

This Court should overrule the Ninth Circuit's decision in this case and remand this matter with instructions to dissolve the permanent injunction and dismiss the complaint.

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Respectfully submitted,

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